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**KORTTNEY ELLIOTT**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

KORTTNEY ELLIOTT,  
Plaintiff,

HASHISHA SMOKE SHOP; SAMAR F.  
DAOUD; and DOES 1 to 10,  
Defendants.

**Case No.:**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR DENIAL  
OF CIVIL RIGHTS OF A DISABLED  
PERSON IN VIOLATIONS OF**

1. AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL RIGHTS ACT;
3. CALIFORNIA'S DISABLED PERSONS ACT;
4. CALIFORNIA HEALTH & SAFETY CODE;
5. NEGLIGENCE

Plaintiff KORTTNEY ELLIOTT (“Plaintiff”) complains of Defendants HASHISHA SMOKE SHOP; SAMAR F. DAOUD; and DOES 1 to 10 (“Defendants”) and alleges as follows:

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## PARTIES

1. Plaintiff is a California resident with a physical disability. Plaintiff suffers from hemiplegia and is substantially limited in her ability to walk. Plaintiff requires the use of a wheelchair at all times when traveling in public.

2. Defendants are, or were at the time of the incident, the real property owners, business operators, lessors and/or lessees of the real property for a smoke shop (“Business”) located at or about 15117 Foothill Blvd., Fontana, California.

3. The true names and capacities, whether individual, corporate, associate or otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court to amend this Complaint when the true names and capacities have been ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such fictitiously named Defendants are responsible in some manner, and therefore, liable to Plaintiff for the acts herein alleged.

4. Plaintiff is informed and believes, and thereon alleges that, at all relevant times, each of the Defendants was the agent, employee, or alter-ego of each of the other Defendants, and/or was acting in concert with each of the other Defendants, and in doing the things alleged herein was acting with the knowledge and consent of the other Defendants and within the course and scope of such agency or employment relationship.

5. Whenever and wherever reference is made in this Complaint to any act or failure to act by a defendant or Defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly and severally.

## **JURISDICTION AND VENUE**

6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and 1333 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et seq.*).

1       7. Pursuant to pendent jurisdiction, attendant and related causes of action,  
2 arising from the same nucleus of operating facts, are also brought under California law,  
3 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,  
4 54, 54., 54.3 and 55.

5       8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

6       9. Venue is proper in this court pursuant to 28 USC §1391(b). Defendants  
7 reside in this district, San Bernardino County, California.

### **FACTUAL ALLEGATIONS**

9       10. In or about July of 2023, Plaintiff went to the Business.

10      11. The Business is a smoke shop business establishment, open to the public,  
11 and is a place of public accommodation that affects commerce through its operation.  
12 Defendants provide parking spaces for customers.

13      12. While attempting to enter the Business during each visit, Plaintiff personally  
14 encountered a number of barriers that interfered with her ability to use and enjoy the  
15 goods, services, privileges, and accommodations offered at the Business.

16      13. To the extent of Plaintiff's personal knowledge, the barriers at the Business  
17 included, but were not limited to, the following:

- 18       a. Defendants failed to comply with the federal and state standards for  
19           the parking space designated for persons with disabilities. Defendants  
20           failed to provide the parking space identification sign with the  
21           International Symbol of Accessibility.
- 22       b. Defendants failed to comply with the federal and state standards for  
23           the parking space designated for persons with disabilities. Defendants  
24           failed to post required signage such as "Van Accessible," "Minimum  
25           Fine \$250" and "Unauthorized Parking."
- 26       c. Defendants failed to comply with the federal and state standards for  
27           the parking space designated for persons with disabilities. Defendants  
28           failed to provide proper van accessible space designated for the

1           persons with disabilities as there were no “NO PARKING” markings  
2           painted on the surface of the access aisle. Additionally, the access  
3           aisle did not meet the minimum required 96-inch width.

4           d. Defendants failed to maintain the parking space designated for  
5           persons with disabilities to comply with the federal and state  
6           standards. Defendants failed to maintain the mark on the space with  
7           the International Symbol of Accessibility.  
8           e. Defendants failed to maintain the parking space designated for  
9           persons with disabilities to comply with the federal and state  
10           standards. Defendants failed to maintain the paint on the ground as  
11           required.

12          14. These barriers and conditions denied Plaintiff the full and equal access to the  
13           Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and  
14           patronize the Business; however, Plaintiff is deterred from visiting the Business because  
15           her knowledge of these violations prevents her from returning until the barriers are  
16           removed.

17          15. Based on the violations, Plaintiff alleges, on information and belief, that  
18           there are additional barriers to accessibility at the Business after further site inspection.  
19           Plaintiff seeks to have all barriers related to her disability remedied. *See Doran v. 7-*  
20           *Eleven, Inc.* 524 F.3d 1034 (9<sup>th</sup> Cir. 2008).

21          16. In addition, Plaintiff alleges, on information and belief, that Defendants  
22           knew that particular barriers render the Business inaccessible, violate state and federal  
23           law, and interfere with access for the physically disabled.

24          17. At all relevant times, Defendants had and still have control and dominion  
25           over the conditions at this location and had and still have the financial resources to  
26           remove these barriers without much difficulty or expenses to make the Business  
27           accessible to the physically disabled in compliance with ADDAG and Title 24  
28

1 regulations. Defendants have not removed such barriers and have not modified the  
2 Business to conform to accessibility regulations.

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5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

7 18. Plaintiff incorporates by reference each of the allegations in all prior  
8 paragraphs in this complaint.

9 19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual  
10 shall be discriminated against on the basis of disability in the full and equal enjoyment of  
11 the goods, services, facilities, privileges, advantages, or accommodations of any place of  
12 public accommodation by any person who owns, leases, or leases to, or operates a place  
13 of public accommodation. *See* 42 U.S.C. § 12182(a).

14 20. Discrimination, *inter alia*, includes:

15 a. A failure to make reasonable modification in policies, practices, or  
16 procedures, when such modifications are necessary to afford such  
17 goods, services, facilities, privileges, advantages, or accommodations  
18 to individuals with disabilities, unless the entity can demonstrate that  
19 making such modifications would fundamentally alter the nature of  
20 such goods, services, facilities, privileges, advantages, or  
21 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

22 b. A failure to take such steps as may be necessary to ensure that no  
23 individual with a disability is excluded, denied services, segregated or  
24 otherwise treated differently than other individuals because of the  
25 absence of auxiliary aids and services, unless the entity can  
26 demonstrate that taking such steps would fundamentally alter the  
27 nature of the good, service, facility, privilege, advantage, or

1 accommodation being offered or would result in an undue burden. 42  
2 U.S.C. § 12182(b)(2)(A)(iii).

3 c. A failure to remove architectural barriers, and communication barriers  
4 that are structural in nature, in existing facilities, and transportation  
5 barriers in existing vehicles and rail passenger cars used by an  
6 establishment for transporting individuals (not including barriers that  
7 can only be removed through the retrofitting of vehicles or rail  
8 passenger cars by the installation of a hydraulic or other lift), where  
9 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

10 d. A failure to make alterations in such a manner that, to the maximum  
11 extent feasible, the altered portions of the facility are readily  
12 accessible to and usable by individuals with disabilities, including  
13 individuals who use wheelchairs or to ensure that, to the maximum  
14 extent feasible, the path of travel to the altered area and the  
15 bathrooms, telephones, and drinking fountains serving the altered  
16 area, are readily accessible to and usable by individuals with  
17 disabilities where such alterations to the path or travel or the  
18 bathrooms, telephones, and drinking fountains serving the altered area  
19 are not disproportionate to the overall alterations in terms of cost and  
20 scope. 42 U.S.C. § 12183(a)(2).

21 21. Where parking spaces are provided, accessible parking spaces shall be  
22 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every  
23 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in  
24 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA  
25 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall  
26 be a van accessible parking space. 2010 ADA Standards § 208.2.4.

27 22. Under the ADA, the method and color of marking are to be addressed by  
28 State or local laws or regulations. See 36 C.F.R., Part 1191. Under the California

1 Building Code (“CBC”), the parking space identification signs shall include the  
2 International Symbol of Accessibility. Parking identification signs shall be reflectorized  
3 with a minimum area of 70 square inches. Additional language or an additional sign  
4 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A  
5 parking space identification sign shall be permanently posted immediately adjacent and  
6 visible from each parking space, shall be located with its centerline a maximum of 12  
7 inches from the centerline of the parking space and may be posted on a wall at the  
8 interior end of the parking space. See CBC § 11B-502.6, et seq.

9       23. Moreover, an additional sign shall be posted either in a conspicuous place at  
10 each entrance to an off-street parking facility or immediately adjacent to on-site  
11 accessible parking and visible from each parking space. The additional sign shall not be  
12 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in  
13 letters with a minimum height of 1 inch the following: “Unauthorized vehicles parked in  
14 designated accessible spaces not displaying distinguishing placards or special license  
15 plates issued for persons with disabilities will be towed always at the owner’s expense...”  
16 See CBC § 11B-502.8, et seq.

17       24. Here, Defendants failed to provide the parking space identification sign with  
18 the International Symbol of Accessibility. In addition, Defendants failed to provide the  
19 signs stating, “Minimum Fine \$250” and “Van Accessible.” Moreover, Defendants failed  
20 to provide the additional sign with the specific language stating “Unauthorized vehicles  
21 parked in designated accessible spaces not displaying distinguishing placards or special  
22 license plates issued for persons with disabilities will be towed always at the owner’s  
23 expense...”

24       25. For the parking spaces, access aisles shall be marked with a blue painted  
25 borderline around their perimeter. The area within the blue borderlines shall be marked  
26 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting  
27 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall  
28 be painted on the surface within each access aisle in white letters a minimum of 12 inches

1 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §  
2 11B-502.3.3.

3       26. Here, Defendants failed to provide a proper access aisle as there were no  
4 “NO PARKING” markings painted on the parking surface. Additionally, the blue  
5 hatched lines, which indicate the presence of the access aisle, were serverely deteriorated,  
6 hindering visibility. Moreover, Defendants failed to provide the access aisle with the  
7 minimum width of 96 inches.

8       27. The surface of each accessible car and van space shall have surface  
9 identification complying with either of the following options: The outline of a profile  
10 view of a wheelchair with occupant in white on a blue background a minimum 36” wide  
11 by 36” high (914 mm x 914 mm). The centerline of the profile view shall be a maximum  
12 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the  
13 length of the parking space and its lower side or corner aligned with the end of the  
14 parking space length or by outlining or painting the parking space in blue and outlining  
15 on the ground in white or a suitable contrasting color a profile view of a wheel chair with  
16 occupant. See CBC § 11B-502.6.4, et seq.

17       28. Here, Defendants failed to maintain the paint of the International Symbol of  
18 Accessibility on the surface as required.

19       29. A public accommodation shall maintain in operable working condition those  
20 features of facilities and equipment that are required to be readily accessible to and usable  
21 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

22       30. By failing to maintain the facility to be readily accessible and usable by  
23 Plaintiff, Defendants are in violation of Plaintiff’s rights under the ADA and its related  
24 regulations.

25       31. The Business has denied and continues to deny full and equal access to  
26 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be  
27 discriminated against due to the lack of accessible facilities, and therefore, seeks  
28

1 injunctive relief to alter facilities to make such facilities readily accessible to and usable  
2 by individuals with disabilities.

3 **SECOND CAUSE OF ACTION**

4 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

5 32. Plaintiff incorporates by reference each of the allegations in all prior  
6 paragraphs in this complaint.

7 33. California Civil Code § 51 states, “All persons within the jurisdiction of this  
8 state are free and equal, and no matter what their sex, race, color, religion, ancestry,  
9 national origin, disability, medical condition, genetic information, marital status, sexual  
10 orientation, citizenship, primary language, or immigration status are entitled to the full  
11 and equal accommodations, advantages, facilities, privileges, or services in all business  
12 establishments of every kind whatsoever.”

13 34. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,  
14 or make any discrimination or distinction contrary to Section 51, 515, or 51.6, is liable  
15 for each and every offense for the actual damages, and any amount that may be  
16 determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
17 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any  
18 attorney’s fees that may be determined by the court in addition thereto, suffered by any  
19 person denied the rights provided in Section 51, 51.5, or 51.6.

20 35. California Civil Code § 51(f) specifies, “a violation of the right of any  
21 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)  
22 shall also constitute a violation of this section.”

23 36. The actions and omissions of Defendants alleged herein constitute a denial  
24 of full and equal accommodation, advantages, facilities, privileges, or services by  
25 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.  
26 Defendants have discriminated against Plaintiff in violation of California Civil Code §§  
27 51 and 52.

37. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

## **THIRD CAUSE OF ACTION**

## **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

38. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

39. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, loading places, places of public accommodations, amusement, or resort, and other places in which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

40. California Civil Code § 54.3(a) states, “Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 54, 54.1, and 54.2.

41. California Civil Code § 54(d) specifies, “a violation of the right of an individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also

1 constitute a violation of this section, and nothing in this section shall be construed to limit  
2 the access of any person in violation of that act.

3       42. The actions and omissions of Defendants alleged herein constitute a denial  
4 of full and equal accommodation, advantages, and facilities by physically disabled  
5 persons within the meaning of California Civil Code § 54. Defendants have  
6 discriminated against Plaintiff in violation of California Civil Code § 54.

7       43. The violations of the California Disabled Persons Act caused Plaintiff to  
8 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for  
9 statutory damages as specified in California Civil Code §55.56(a)-(c).

#### **FOURTH CAUSE OF ACTION**

## **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

12       44. Plaintiff incorporates by reference each of the allegations in all prior  
13 paragraphs in this complaint.

14       45. Plaintiff and other similar physically disabled persons who require the use of  
15 a wheelchair are unable to use public facilities on a “full and equal” basis unless each  
16 such facility is in compliance with the provisions of California Health & Safety Code §  
17 19955 et seq. Plaintiff is a member of the public whose rights are protected by the  
18 provisions of California Health & Safety Code § 19955 et seq.

19       46. The purpose of California Health & Safety Code § 1995 et seq. is to ensure  
20 that public accommodations or facilities constructed in this state with private funds  
21 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of  
22 Title 1 of the Government Code. The code relating to such public accommodations also  
23 require that “when sanitary facilities are made available for the public, clients, or  
24 employees in these stations, centers, or buildings, they shall be made available for  
25 persons with disabilities.

26       47. Title II of the ADA holds as a “general rule” that no individual shall be  
27 discriminated against on the basis of disability in the full and equal enjoyment of goods  
28 (or use), services, facilities, privileges, and accommodations offered by any person who

1 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).  
2 Further, each and every violation of the ADA also constitutes a separate and distinct  
3 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an  
4 award of damages and injunctive relief pursuant to California law, including but not  
5 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

## **FIFTH CAUSE OF ACTION**

### **NEGLIGENCE**

9       48. Plaintiff incorporates by reference each of the allegations in all prior  
10 paragraphs in this complaint.

11       49. Defendants have a general duty and a duty under the ADA, Unruh Civil  
12 Rights Act and California Disabled Persons Act to provide safe and accessible facilities  
13 to the Plaintiff.

14       50. Defendants breached their duty of care by violating the provisions of ADA,  
15 Unruh Civil Rights Act and California Disabled Persons Act.

16       51. As a direct and proximate result of Defendants' negligent conduct, Plaintiff  
17 has suffered damages.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for relief and judgment against Defendants as follows:

1. For preliminary and permanent injunction directing Defendants to comply  
with the Americans with Disability Act and the Unruh Civil Rights Act;

23       2. Award of all appropriate damages, including but not limited to statutory  
24 damages, general damages and treble damages in amounts, according to proof;

25       3. Award of all reasonable restitution for Defendants' unfair competition  
26 practices;

27       4. Reasonable attorney's fees, litigation expenses, and costs of suit in this  
28 action;

5. Prejudgment interest pursuant to California Civil Code § 3291; and
6. Such other and further relief as the Court deems just and proper.

## **DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: October 23, 2023

## SO. CAL. EQUAL ACCESS GROUP

By: /s/ Jason J. Kim  
Jason J. Kim, Esq.  
Attorneys for Plaintiff